



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
25.09.2020	20.10.2020

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CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

**W.P. (MD) No.2895 of 2020
and
W.M.P. (MD) Nos.2442, 2444 & 6706 of 2020**

M.G.Saravanan

... Petitioner

vs.

- 1.The Commissioner of Police
Trichy City Police Office
Pudukkottai Main Road
Subramaniapuram
Tiruchirappalli - 620 020
- 2.The Joint Chief Controller of Explosives
A and D Wing, Block 1 - 8
Shastri Bhavan
No.26, Haddows Road
Nungambakkam
Chennai - 600 006
- 3.The Divisional Engineer
(Construction and Maintenance)
Highways Department
25/28, Shankar Illam
Pudukkottai Main Road
Subramaniapuram
Tiruchirappalli - 620 020
- 4.The Commissioner
Trichy Municipal Corporation
No.58, Bharathidasan Road
Tiruchirappalli Cantt
Tiruchirappalli - 620 001
- 5.The District Revenue Officer
Tiruchirappalli District
Collectorate Campus
Tiruchirappalli - 620 001



6.The Territory Manager
Bharat Petroleum Corporation Limited
Trichy Retail Territory
1st Floor Towers
Near Kalaighnan Arivalayam
Karur Bye Pass Road
Trichy - 620 002

7.Anuradha Sivaramakrishnan ... Respondents
[R7 is impleaded vide Court Order
dated 08.09.2020 in W.M.P.(MD)
No.6757 of 2020 in WP(MD).2895/2020]

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records of the No Objection Certificate No.M2/23498/2019 dated 18.12.2019 issued by the first respondent in favour of the 6th respondent to open and operate a New Road-side Petroleum Retail Outlet at Survey No.240/1A (Old S.No.199/1A), Ward No.5, Block No.74, Ariyamangalam Village, Trichy - 620 010 in close proximity to Equitas Gurukul Matriculation Higher Secondary School and several public / residential buildings and to quash the same.

For Petitioner : Mr.V.B.R.Menon

For Respondents: Mr.R.Murugan
Additional Public Prosecutor for R1, R3 & R5
Mr.S.Jeyasingh
Central Government Standing Counsel for R2
Mr.N.S.Karthikeyan for R4
Mr.S.Nateshraaja for R6
Mr.Isaac Mohanlal, Senior Counsel
M/s.Isaac Chambers for R7

O R D E R

K.KALYANASUNDARAM, J.

This writ petition has been filed as Public Interest Litigation challenging the No Objection Certificate issued by the first respondent in favour of the sixth respondent, dated 18.12.2019, to open and operate a New Roadside Petroleum Retail Outlet, at Survey No.240/1A (Old S.No.199/1A), Ward No.5, Block No.74, Ariyamangalam Village, Trichy.

2. The case of the petitioner is that in Equitas Gurukul Matriculation Higher Secondary School at Trichy, large number of students from Pre-KG onwards are studying. Rule 11(j) of G.O.No.256, dated 22.12.2015, stipulates to maintain minimum

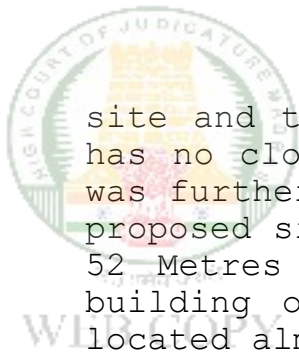


distance of 100 Metres between the petroleum retail outlet and the school, however, the Equitas Gurukul Matriculation School is situated about 50 Metres from the proposed petroleum retail outlet. It is also stated that taking note of the environmental hazards, the Central Pollution Control Board (CPCB), vide Office Memorandum dated 07.01.2020, issued directions to maintain safe distances of Petroleum Retail Outlets from residential areas and schools pursuant to the directions issued by the Hon'ble NGT in O.A.No.31/2019, dated 22.07.2019.

3. The petitioner would further state that the proposed site for the petroleum pump shall be holding highly inflammable, explosive and dangerous petroleum products under Explosive License which shall pose serious danger to the health, life and safety of the large number of small children studying in the school and the people residing in the surrounding areas which shall violate their right to life guaranteed under Article 21 of the Constitution of India.

4. It is alleged that the norms prescribed by the Indian Road Congress in IRC Circular Norms 12-2009 have also been violated in this case. According to the petitioner, Rule 4.2 prescribes that the location of the proposed fuel station shall not interfere with future improvements of the Highway/Road and nearby intersections/junctions and they should maintain minimum distance of 300 Metres from the proposed location. Further, as per Rule 4.6.2, minimum distance of 175 Metres is not maintained between the proposed site and the existing fuel station. If those norms are not complied with, no new Fuel Station can be permitted to be established in the site. The first respondent, without conducting any enquiry to ascertain and assess the suitability of the proposed site as contemplated under Rule 144.5 of the Petroleum Rules, issued the impugned No Objection Certificate and similar No Objection Certificates were set aside by this Court. He has also referred the orders passed in W.P.No.23546 of 2017 dated 05.09.2017, W.P.No.26624 of 2016 dated 07.02.2017, W.P.No.32005 of 2017 dated 15.12.2017, W.P.No.19830 of 2019 dated 30.09.2019 and W.P.No.5690 of 2019 dated 05.08.2020 in support of his case.

5. In the counter affidavit filed by the first respondent, the allegations made by the petitioner were denied and it is further stated that after the sixth respondent submitted application seeking No Objection Certificate on 30.10.2019, the first respondent deputed the Assistant Commissioner of Police, Traffic Cantonment, Trichy to inspect the spot. Accordingly, he personally inspected the land where the proposed new petroleum outlet is proposed during November 2019, which was followed by the Inspector of Police and after conducting inspection, a report was submitted on 24.11.2019. Based on the report and after considering the relevant materials, it was found that there was no dispute with regard to the possession of the

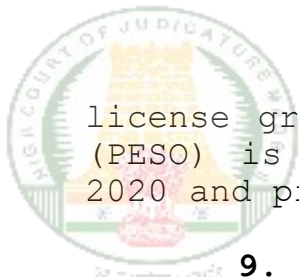


site and the land being located in the industrial zone and that it has no close proximity to any residential or public buildings. It was further found that the distance between the compound wall of the proposed site and Equitas Gurukul Matriculation Secondary School was 52 Metres and the distance from the filling point to the actual building of the school is almost 100 Metres and a Gas Godown is located almost 250 Metres away from the land.

6. In the counter affidavit filed by the first respondent, it is further stated that while conducting enquiry, there was no objection from anyone including from the school for setting up the proposed petroleum pump. There is also no traffic density inasmuch as the proposed outlet is located in the Oil Mill road, which connects Tanjore Main Road, which is almost 350 Metres away from the pump. It is further stated that there was no other development proposal by the Local Planning Authority. The Fire and Safety Department had also issued No Objection Certificate for the said land. The genuineness of the need for the said retail outlet was also verified and it was found that there is no other outlet for almost 2 Kilometres in the surrounding radius and considering all these, the No Objection Certificate was issued on 18.12.2019 as prescribed under Rule 144 of the Petroleum Rules.

7. In the counter, the guidelines issued by the Central Pollution Control Board (CPCB) dated 07.01.2020, are extracted to show that minimum distance of 50 Metres from filling point shall be maintained between the proposed new retail outlet and from the schools, hospitals and the residential areas and there shall not be less than 30 Metres in any case. It is further stated that in W.P.No.19218 of 2019 and batch of cases, this Court vide order dated 17.10.2019 held that the IRC Circular was not made mandatory as the same was not adopted by the State Government. Even by applying norms, there is no violation in issuance of the impugned No Objection Certificate. The Petroleum Rules 2002 prescribed certain formats for issuance of No Objection Certificate and as per the format prescribed under Rule 144 of the Petroleum Rules, the No Objection Certificate was issued.

8. The first respondent has further stated that the impugned No Objection Certificate is only a part of various other relevant permissions required for grant of license by the Petroleum and Explosive Safety Organization (PESO) to be issued by the Ministry of Commerce and Industry. Subsequent to the issuance of the No Objection Certificate impugned in this writ petition, the second respondent granted plan approval dated 30.01.2020 and the Petroleum and Explosive Safety Organization (PESO) had granted license under Form XIV of the Petroleum Rules vide proceedings dated 30.01.2020 and thereafter, the sixth respondent appointed the seventh respondent to open retail outlet and accordingly, the petroleum pump has started to function and it is ongoing petroleum pump. The



license granted by the Petroleum and Explosive Safety Organization (PESO) is also challenged by the petitioner in W.P(MD)No.8332 of 2020 and prayed to dismiss the writ petition.

9. The sixth respondent filed a detained counter denying each and every allegation made by the petitioner. It is the case of the sixth respondent that in pursuance of the publication dated 25.11.2018 calling for application for dealers for running petroleum retail outlets in various locations, the seventh respondent was found to be the successful candidate in regard to the site at Oil Mill Road, Ariyamangalam Village, Trichy. The letter of intend was issued to her on 18.10.2018 after physical field verification and physical inspection of land. Thereafter, they applied for No Objection Certificate to run the petroleum retail outlet in the subject land. The No Objection Certificate was issued by the first respondent on 18.12.2019, followed by the same, on 30.01.2020 PESO License was issued by the second respondent. Thereafter, the retail outlet was functioned and has been selling diesel since 30.01.2020. It is further stated that the first respondent issued the No Objection Certificate in question only after inquiry as contemplated under Rule 144 of the Petroleum Rules. According to the sixth respondent, the authorities issued license after following the procedures and hence, there is no violation any of the Rules. It is further stated that the actual distance between the school building and the retail outlet is about 80 Metres and 50 Metres from the entrance gate, which satisfies the guidelines framed by the Central Pollution Control Board, dated 07.01.2020 in Office Memorandum Ref.No. B-13011/1/2019-20/AQM/10902-10847 dated 07.01.2020 and the 100 Metres norms is not applicable to the present case.

10. According to the sixth respondent, there is no impediment in the Petroleum Rules or in the Explosives Act or Rules in issuing Petroleum license to establish a petroleum retail outlet near public places as it is an essential commodity catering to the needs of motorist public. That part, the school referred to in the writ petition is admittedly a Matriculation Higher Secondary School. Though the Honourable First Bench of this Court in W.P.No.23546 of 2017 issued directions to frame regulations and restricting the opening of retail outlets near schools, eventually the writ petition was finally disposed of on 13.08.2019 by observing that there is no need to issue any mandamus as prayed for by the petitioner. However, the petitioner herein has deliberately suppressed the final order in the writ petition and referred only the interim orders. It is also stated that in the very same issue, this Court in a batch of writ petitions in W.P.No.19218 of 2019, considered all the aspects and dismissed the writ petitions vide order dated 17.10.2019 and held that IRC guidelines are only recommendatory and not mandatory to follow and no mandamus can be issued directing the Oil Corporations to follow IRC guidelines. The order was also confirmed by the Apex Court in the Special Leave Petition on 15.11.2019.



11. Originally, the seventh respondent, namely, Anuradha Sivaramakrishnan, was not a party to the writ petition. After she was appointed as a dealer by the sixth respondent Petroleum Corporation and in view of the counter filed by the sixth respondent stating that the dealer is a necessary party, an application in W.M.P.(MD) No.6757 of 2020 was filed, thereupon, she was impleaded as a respondent. In the impleading application, the allegations and the averments made by the petitioner were denied and hence, Mr.Isaac Mohanlal, learned Senior Counsel for the seventh respondent, submitted that the affidavit filed in support of the impleading application itself can be treated as a counter affidavit for the present writ petition.

12. In the affidavit filed in support of the impleading application, the seventh respondent has narrated the entire events from the publication of the tender notification by the Petroleum Corporation, dated 25.11.2018, whereby applications were called for from eligible candidates for appointment of retail outlet dealers at various locations in the State of Tamil Nadu and Union Territory of Pudhucherry and the seventh respondent was being found eligible to the place in question and issuance of No Objection Certificate, which is impugned in this writ petition and till the licence issued by the Petroleum & Explosives Safety Organisation (PESO) to operate the outlet. The sum and substance of the case of the seventh respondent is that G.O.Ms.No.206, dated 22.12.2015, is applicable only to the Play Schools and the minimum distance of 100 Metres prescribed in the said Government Order would have no application to the case on hand, since Equitas Gurukul is a Matriculation Higher Secondary School. The distance between the compound wall of the petrol pump and the School is about 52 Metres, but the actual distance between the both would be about 80 Metres. Further, in between both the lands, there are trees and there is no possibility of any airborne or petroleum vapour to reach the School, inasmuch as the proposed outlet is a very small one and it is permitted to store and sell only 20 Kiloliters of each petrol and diesel at a time. Only in the event that selling of petroleum products crosses 300 Kiloliters per month, there is a possibility of pollution by petroleum airborne.

13. It is further stated that the distance between the School and the petrol pump in the case satisfies the guidelines framed by the Central Pollution Control Board, vide Office Memorandum in Ref.No.B-13011/1/2019-20AQM/10902-10847, dated 07.01.2020. Earlier the Ministry of Petroleum and Natural Gas was selling BS-III petroleum products and the same is shifted to BS-IV in the year 2010 and in order to reduce the pollution, now the Ministry has started to sell BS-VI petroleum products since 01.04.2020 and thereby, the pollution level has been drastically reduced. Further, Vapour Recovery System (VRS) has been installed



in order to control the pollution due to petroleum vapour.

14. It is further stated that the Division Bench, in a batch of writ petitions in W.P.No.5690 of 2019, vide order dated 05.08.2019 and W.P.(MD) Nos.19244 and 19380 of 2019, vide order dated 30.09.2019, quashed the No Objection Certificates granted by the Commissioner of Police on the ground that the same are verbatim orders, however, the same cannot be applied to the present case for the reason that after issuance of the impugned No Objection Certificate, the other Authorities, namely, PESO had granted licence and the second respondent / Joint Chief Controller of Explosives had given plan approval.

15. In another batch of writ petitions in W.P.(MD) Nos.19218 and 3678 of 2019, the Division Bench of this Court, vide order dated 17.10.2019, has held that Indian Road Congress (IRC) norms are only recommendatory and not mandatory and the State of Tamil Nadu has not implemented / adopted the same and even assuming the IRC norms are applicable to the present case, there is no violation in the petrol pump in dispute as the same is not in any road junction and even if there is any future expansion of road, the same will no way affect the land of the seventh respondent or the petrol pump in dispute.

16. A rejoinder affidavit has been filed by the petitioner, wherein it is stated that the earlier orders of this Court have been violated by the first respondent while issuing the impugned No Objection Certificate. G.O.No.256 of 2015, dated 22.12.2015, is applicable to this case as the School conducts LKG and UKG classes and therefore, the general guidelines issued by the National Green Tribunal (NGT) and Central Pollution Control Board (CPCB) may not be relevant except in those areas, where statutory regulations do not operate and exist. In a public interest litigation in W.P.No.23546 of 2017, the Honourable First Bench had taken judicial notice about the health hazards that the operation of the petroleum retail outlets pose to all type of Schools within a distance of 100 Metres and directed the State to formulate Rules for the Schools, which do not come under the ambit of Play School Regulations. The petitioner in that case decided to withdraw the writ petition in the year 2019 for his personal reasons and the withdrawal of the public interest litigation shall in noway erase the view taken by the Honourable First Bench. It is also stated that the sales had not commenced on 30.01.2020 and the photographs of the site on the date would show that more than 50% of the site works remained incomplete and the sale was commenced in violation of the *status quo* order issued in this case on 13.02.2020.

17. Heard Mr.V.B.R.Menon, learned counsel for the petitioner and Mr.R.Murugan, learned Additional Government Pleader for the respondents 1, 3 & 5, Mr.S.Jeyasingh, learned Central Government Standing Counsel for the second respondent, Mr.N.S.Karthikeyan,



learned counsel for the fourth respondent, Mr.S.Nateshraaja, learned counsel for the sixth respondent and Mr.Isaac Mohanlal, learned Senior Counsel for the seventh respondent and perused the materials available on record, including the written submissions of the learned counsels for the parties.

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18. It is the submission of the learned counsel for the petitioner that the Matriculation School is in close proximity to the proposed petroleum outlet and G.O.No.256, dated 22.12.2015, prescribes maintaining minimum distance of 100 Metres for establishment of a new petroleum outlet from the School premises. However, the learned counsel for the respondents would argue that the Government Order referred to and relied on by the learned counsel for the petitioner is only for establishment of Primary Schools and it does not have application to the Matriculation Schools. It is also contended that the Central Pollution Control Board (CPCB) has issued guidelines, dated 07.01.2020, for maintaining distance between the Schools and petroleum outlets and as per the guidelines, only 50 Metres and not less than 30 Metres should be maintained. It is also stated that even though the guidelines were issued subsequent to issuance of No Objection Certificate, while deciding the issue, subsequent events should also be taken into consideration. Since admittedly the distance between the School and the petroleum outlet is 52 Metres, there is no violation in issuing the No Objection Certificate.

19. A perusal of G.O.No.256, dated 22.12.2015, would reveal that a distance criteria has been prescribed under the said Government Order as a pre-condition for granting recognition to the Play Schools, under which an embargo is placed for establishment of any Play School within 100 Metres from the petroleum pumps. Undisputably, no such condition is imposed in the Rules framed under the Petroleum Act, 1934.

20. It is apposite to note that in pursuance of the directions issued by the National Green Tribunal (NGT), the Central Pollution Control Board (CPCB), which is a statutory body under the Air (Prevention and Control of Pollution) Act, 1981, has issued guidelines, dated 07.01.2020. It is not disputed that the guidelines have statutory force. The relevant portion in the guideline is extracted hereunder:

"H.Sitting Criteria of Retail Outlets:

In case of sitting criteria for petrol pumps new Retail Outlets shall not be located within a radial of 50 meters (from the fill point / dispensing units / vent pipe whichever is nearest) from the schools, hospitals (10 beds and above) and the residential areas designated as per local laws. In case of constrains in providing 50 meters distance, the retail outlet



"4.2. It should be ensured that the location of the proposed fuel station does not interfere with future improvements of the highway / road and the nearby intersections/junctions.

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4.5. In order to provide safe length for weaving of traffic, fuel stations along highways / roads shall be located at the minimum distance from an intersection (gap in the central median be treated as intersection), as given below. For single carriageway section, these minimum distances would be applicable for both sides. All the distance shall be measured between the tangent points of the curves of the side roads at intersections / the median openings and the access / egress roads of the fuel stations, as is applicable, in a direction parallel to the centre line of the nearest carriageway of the highway.

The above mentioned distance are applicable for setting up of fuel stations along National Highways, State Highways and Major District Roads. In case of fuel stations along the Rural Roads in plain and rolling terrain, the distance from the intersection with Nhs/SHs/MDRs can be reduced to 300 m in place of 1000 m depending on the level of traffic.

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4.5.2 Urban stretches

1. Plain and Rolling Terrain

(a) Urban Area with population of more than 20,000 and less than one lakh

(i) Intersection with any category of roads of carriageway width of 3.5 m and above 300 m

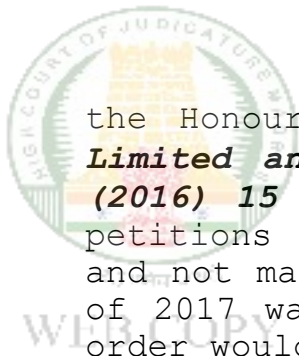
(ii) Intersection with roads of carriageway width of less than 3.5 m 100 m

(b) Urban Area with population of one lakh and above.

(i) Intersection with any category of road (irrespective of carriageway width) 100 m"

24. Perusal of the Rules shows that the proposed site for establishment of new petroleum outlet shall not be hindrance to the future development and there shall be a minimum distance of 300 Metres between the existing pump and new outlet.

25. The issue as to whether implementation of the IRC guidelines is mandatory or recommendatory came up for consideration before the Division Bench of this Court in W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019 and this Court, after considering the decision of



the Honourable Apex Court in the case of **Indian Oil Corporation Limited and others vs. Arti Devi Dangi and another**, reported in (2016) 15 SCC 480, vide order dated 17.10.2019, dismissed the writ petitions holding that the IRC guidelines are only recommendatory and not mandatory. In the Judgment, the order passed in W.P.No.691 of 2017 was also considered. The relevant paragraphs of the said order would run thus:

"44. The Indian Roads Congress, Multi-Member Body, consists of Experts, have framed these guidelines from time to time. Their recommendations have to fructify into statutory notifications or orders or by suitable amendment to the legislation. Until the recommendations fructify into anyone of these, they continue to remain as guidelines and are to be interpreted as recommendatory and not mandatory. The Experts have made a suggestion with laudable intentions and the ultimate reason for doing so is to ensure safe road traffic. Therefore, the respondents would not be justified in refusing to look into the guidelines.

45. On a reading of the counter affidavit of the respondent Oil Corporations, we find the respondents they do not take such a rigid stand, but, their stand appears to be that the guidelines of the Indian Roads Congress are the guidelines per se and they cannot be compelled to follow the same as there are more stringent norms under the National Highways Act and PESO. If such is the position, the question would be whether, we, exercising jurisdiction under Article 226 of the Constitution of India could issue a writ of mandamus to compel the respondent Oil Corporations to adopt the guidelines issued by the Indian Roads Congress in the year 2009. The scope of issuing directions by the Writ Courts is no longer res integra. There should be a statutory duty cast upon the respondents to do a particular act. Upon failure, the arms of this Court are long enough to command to do that duty. In the instant case, the petitioner seeks for a direction from us to compel a Statutory Authority, namely, the State or the Central Government Authority and the Oil Corporations to follow a procedure, which is in the nature of the guidelines framed by an Expert Body and published in the year 2009. Therefore, in the facts of the present case, no direction can be issued to compel the respondents to adopt the guidelines of the Indian Roads Congress in its



entirety.

46. One more aspect, which we need to take note of is that these guidelines, which are recommendatory, were issued in the year 2009. Admittedly, several notifications have been issued by the respondents Oil Corporations post 2009 and there is nothing on record placed before us by the petitioner to show that there was a challenge to any of those notifications on the ground of non-adherence to the guidelines of the Indian Roads Congress. In fact, the petitioner Mr.Durairaj Venkatachalam cannot plead for issuing a writ of mandamus, especially when he was an applicant under the notification. Therefore, the guidelines being recommendatory, it is for the appropriate Authority to consider the effectiveness and efficacy or bring amendments in the statute so as to bind the statutory authorities, who are required to issue no objection certificates or clearances or approvals. Therefore, we cannot be called upon to issue a direction to implement the guidelines, thereby introducing a different procedure or norms than what have been prescribed under the Central enactment or the rules framed thereunder or any other statutory notification by the executive instructions issued by the Central or State Government.

47. It is no doubt true that sufficient thought process has gone into before framing 2009 guidelines. However, we are not experts to state that the guidelines are far superior than the statutory provisions or the statutory provisions are far superior than the guidelines. Admittedly, ten years have passed by, after the guidelines were published. There have been various developments in the country insofar as road infrastructure is concerned. Several methodologies have been adopted by the both State Highways and National Highways Authority of India. Therefore, we are of the clear view that no direction can be issued to the respondents by compelling them to follow the guidelines of the Indian Roads Congress published in the year 2009.

48. In the case of **Arti Devi Dangi** (supra), the question was whether the insistence by the Indian Oil Corporation Limited on adherence to the Indian Roads Congress (IRC) Guidelines requiring maintenance of specific distance between the proposed retail outlet and the median of the road



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was correct in view of the fact that in the advertisement and the brochure there was no specific reference to the said guidelines and no specific mention was made that the same would have to be complied with by a tenderer. The Honourable Supreme Court noted that the IRC Guidelines have been adopted by the PWD, Madhya Pradesh and therefore, it was argued by the Indian Oil Corporation Limited that the respondents ought to have verified all such requirements that the rules and sub-rules of PWD stipulate including the requirements spelt out under the IRC Guidelines.

49. It was contended by the respondents therein that there was no specific reference to the guidelines in question and hence, the requirement of compliance of those guidelines was not an essential condition of the tender. It was held that if the clauses in the advertisement required a tenderer to fulfil all requirements under the rules and sub-rules of PWD and if what was suggested / recommended by IRC has been adopted by the State PWD and the said norms are in the interest of public safety and would facilitate smooth movement of traffic, it will be difficult to hold that the rules and sub-rules of PWD contemplated in the advertisement do not embrace the IRC Guidelines either because there was no specific mention thereof in the tender documents or the same do not have a statutory flavour. Therefore, it was held that the fulfilment of the requirements spelt out by the IRC Guidelines, relevant to the said case, to be a mandatory requirement of the tender conditions. Accordingly, it was held that the action of the Corporation was not arbitrary or unreasonable. Further, on perusal of the orders of the High Court, it was held that the only basis on which the decision of the Corporation had been faulted by the High Court was on the ground that the IRC Guidelines were not mandatory. It was pointed out that such a view cannot be sustained keeping in mind the provisions of the advertisement, the purport and object of the said norms, the uniform application of the same to all the tenderers by the Corporation and above all the requirements of public interest. In the light of the said conclusion, the Honourable Supreme Court has held that it is not necessary to consider the arguments advanced on the question of permissibility of



deviations from the tender conditions on the touchstone of public interest or the issue of understanding the requirement of the IRC Guidelines as implied terms of the tender document.

50. In our considered view, the decision in the case of **Arti Devi Dangi** (supra), at the first instance appears to hold that the IRC Guidelines are in effect mandate. However, on a closure reading of the decision, one important fact, which should not be lost sight of was that in the said case, the proposed retail outlet was to be located in the State of Madhya Pradesh and the Public Works Department of Madhya Pradesh have adopted the IRC Guidelines and they have framed rules and sub-rules. These rules and sub-rules were binding on the applicant. In such circumstances, the Honourable Supreme Court held that though the tender notification did not expressly spell out the requirements to comply with the IRC Guidelines, the same having been adopted by the State Public Works Department, the applicant cannot state that the compliance of such condition was not an essential condition of tender.

51. In the case on hand, the petitioner has not been able to substantiate with any document to show that the State Public Works Department or the Central Government had adopted 2009 Guidelines and framed rules and sub-rules under the relevant statute. At this juncture, we wish to reiterate our conclusion, which we have recorded in the preceding paragraphs with regard to the effect of the order passed in W.P.No.691 of 2017, dated 18.01.2019, filed by Mr.V.B.R.Menon. We have already held that the said decision can in no manner advance the case of the writ petitioner.

52. Further, we note that in Paragraph No.8 of the decision in the case of **Arti Devi Dangi** (supra), the provisions of the advertisement were noted and the advertisement specifically states that the proposed plot of land for the dealership should not be on the National Highway / State Highway and should fulfill all the rules and sub-rules of PWD and local legal necessities. In the light of the said factual position, the above decision was rendered. Therefore, in our view, the said decision is factually distinguishable and does not render assistance to the case of the petitioners. Having held that the decision in the



case of **Arti Devi Dangi** (supra) would not assist the case of the petitioner, it goes without saying that the same cannot be pressed into service as law declared under Article 141 of the Constitution of India and therefore, the said argument of the petitioner also has to fail.

53. Once again, we revert back to the effect of the order, dated 18.01.2019, passed in W.P.No.691 of 2017. In the compilation of Judgments, the learned counsel for the petitioner has also enclosed a memo dated 05.04.2018, issued by the Chief Engineer (H), Construction and Maintenance, Chennai. By the said memo, all the Superintending Engineers of Highways and Divisional Engineers of Highways of the Construction and Maintenance Wing were strictly instructed to comply with the IRC 12-2009 Guidelines. In the said memo, there is a reference to the writ petition filed by Mr.V.B.R.Menon in W.P.No.691 of 2017, dated 18.01.2019. This memo dated 05.04.2018, of the Chief Engineer (H), Construction & Maintenance, Chennai, was placed by the petitioner before the Division Bench and the same was placed on record and the Court observed that since clarification has been issued by the Department concerned, the prayer made in the writ petition stands granted by the respondent. Therefore, no further direction was necessary in the public interest writ petition.

54. The learned counsel for the petitioners would submit that the memo of the Chief Engineer, dated 05.04.2018, is the decision of the Government. Such a plea cannot be countenanced, because, at best, the Chief Engineer can issue administrative instructions to her subordinate officers within the subjects falling within her jurisdiction. Any such instruction given to the subordinate officers beyond her powers cannot bind the Government. That apart, the memo dated 05.04.2018 has been issued citing the writ petition in W.P.No.691 of 2017. It is not known under what circumstances, the Chief Engineer referred to the said writ petition and issued the memo. The said writ petition was filed in the year 2017. The matter was heard by the Honourable First Bench on 24.04.2017. On the said date, the time to file counter affidavit was extended as a last chance by two weeks i.e. on or before

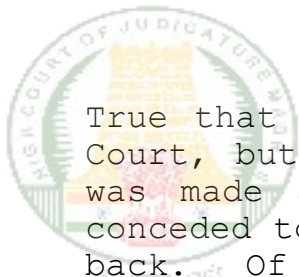


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16.06.2017 and rejoinder that to be filed within one week thereafter and the matter was directed to be listed on 04.07.2017. However, it appears that subsequently, the matter was listed on 18.01.2019 and the same was disposed of by the aforementioned order. The larger question would be whether the Chief Engineer had authority to instruct the Superintending Engineers (H) and Divisional Engineers (H) to strictly adhere to IRC 12-2009 Guidelines for issuance of no objection certificate. There is no reference to any direction issued by either the State Government or Central Government for the Chief Engineer to compel her subordinates to strictly comply with the IRC Guidelines. Therefore, we are of the view that the direction issued by the Chief Engineer at best can be treated as directory if it does not suffer from the vice of lack of jurisdiction. When a statutory rule or a notification is in vogue, the same will prevail over the memo issued by the Chief Engineer. Therefore, we cannot be called upon to alleviate the status of the memo issued by the Chief Engineer to that of the statutory notification or the rules."

26. The view taken by the Division Bench of this Court was also upheld by the Honourable Apex Court vide order dated 15.11.2019 in S.L.P.No.26440 of 2019. This apart, even though it is contended by the learned counsel for the petitioner that there are violations of the guidelines issued by the Indian Road Congress (IRC), especially Rules 4.2 and 4.5.2. In the counter affidavit filed by the first respondent, it has been categorically stated that there is no traffic density in the area in question as the proposed outlet is located in the Oil Mill Road, which connects Tanjore Main Road, which is almost 350 Metres away from the petroleum outlet. It is also stated that there is no other development proposal by the Local Planning Authority and it was found that there is no other outlet for almost 2 Kilometres in the surrounding radius. According to the respondents, even assuming that the IRC guidelines are applicable to the case on hand, there is no violation of any of the Rules. But, the petitioner except contending that the applicability of IRC norms is mandatory, however, he is not in a position to demonstrate the violations of any of the guidelines in this case. So, we do not find any merit in the submissions of the learned counsel for the petitioner in this regard.

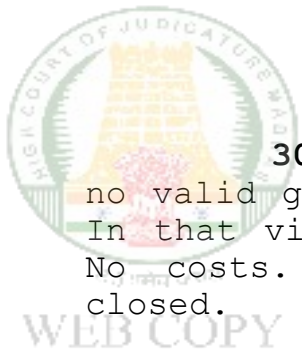
27. The orders passed by this Court in W.P.(MD) No.19244 & 19830 of 2019; W.P.(MD) No.5690 of 2019 and W.P.No.5125 of 2020 have been cited by the learned counsel for the petitioner to show that



True that similar No Objection Certificates were set aside by this Court, but perusal of the orders would indicate no serious contest was made and the learned counsel for the respondents themselves conceded to approach the original Authority by remanding the matters back. Of course, it has been observed that there was nothing on record to show satisfactory compliance of requirements of Rule 144 of the Petroleum Rules. However, in this case, according to the respondents, twice inspection was conducted and during the enquiry, none objected including the School Authorities. Moreover, as rightly pointed out by the learned counsel for the respondents, subsequent to the issuance of the impugned NOC by the first respondent, the other Authorities, namely, PESO had granted licence and the second respondent / Joint Chief Controller of Explosives had given plan approval for running the petroleum outlet and those orders are challenged by the petitioner in W.P.(MD) No.8332 of 2020. Further, it is the specific contention of the respondents that before issuance of the impugned No Objection Certificate, due process has been followed and there is no infirmity. Taking note of the subsequent developments, we are of the opinion that the orders referred by the learned counsel for the petitioner are factually distinguishable.

28. It is next argued by the learned counsel for the petitioner that the subject land stands in the names of Ganthimathy and Venkatachalam and the sixth respondent is not in possession of the land to fulfil the requirement Clause of 1(a) of the proforma of NOC and the other statutory Authorities, namely, respondents 3 to 5 have not been consulted to decide on the suitability of the site in question.

29. In reply, the learned counsel for the sixth respondent would state that the subject location is the dealer controlled site, which means that the dealer should own or having a registered lease of the land or the family members of the applicant, who owns the land has to give consent in the prescribed format of the Oil Corporations to give their land to run the retail outlets. In this case, Ganthimathy and Venkatachalam, whose names found in the encumbrance certificate, are the parents of the husband of the seventh respondent, namely, Sivaramakrishnan and he has submitted Appendix- III A to the sixth respondent - Oil Corporation, which satisfies the clause 1(a) of the proforma of NOC. Even though this ground is not raised in the affidavit filed in support of the writ petition, during the course of hearing of the writ petition, the learned counsel for the petitioner raised this point and a proper reply was given by the respondents. It is pertinent to note that admittedly, the other Statutory Authorities are before this Court and it is not their case that the site in question would be a hindrance for future developments and they were never consulted regarding the suitability of the site. Therefore, we find no substance in the contention of the learned counsel for the petitioner.



30. For the foregoing reasons, in our considered opinion, no valid ground is made out warranting interference of this Court. In that view, the writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

skn / krk

To:

- 1.The Commissioner of Police,
Trichy City Police Office,
Pudukkottai Main Road,
Subramaniapuram,
Tiruchirappalli - 620 020.
- 2.The Joint Chief Controller of Explosives,
A and D Wing, Block 1 - 8,
Shastri Bhavan,
No.26, Haddows Road,
Nungambakkam,
Chennai - 600 006.
- 3.The Divisional Engineer,
(Construction and Maintenance)
Highways Department,
25/28, Shankar Illam,
Pudukkottai Main Road,
Subramaniapuram,
Tiruchirappalli - 620 020.



4.The Commissioner
Trichy Municipal Corporation
Tiruchirappalli.

5.The District Revenue Officer,
Tiruchirappalli District,
Collectorate Campus,
Tiruchirappalli - 620 001.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-20618[F] dated 20/10/2020

+1 CC to M/s.S.JEYA SINGH, Advocate (SR-20624[F] dated 21/10/2020)

ORDER
in
W.P. (MD) No.2895 of 2020
and
W.M.P. (MD) Nos.2442, 2444 & 6706 of 2020

20.10.2020

SRK(CO)
NR (02/11/2020) 19P : 8C